

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

CHARLES O. TONEY, JR., )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 1:10-cv-299  
 )  
 MARK RAULSTON, BRAIN WOODS, ) Judge Mattice  
 and JOHN DOES 1-5, )  
 )  
 Defendants. )  
 )

**MEMORANDUM AND ORDER**

**I. PROCEDURAL BACKGROUND**

Plaintiff filed the Complaint for the instant case on November 3, 2010 [Court Doc. 2, Compl.] There is no indication in the record that Plaintiff ever served the Defendants in the case with a copy of the Complaint and a summons. In accordance with Federal Rule of Civil Procedure 4, the Court ordered Plaintiff to show cause on or before April 8, 2011 as to why Plaintiff's Complaint should not be dismissed pursuant to Rule 4(m). [Court Doc. 4, Order]. Plaintiff did not file a timely response to the Court's Order.

**II. ANALYSIS**

Federal Rule of Civil Procedure 4(m) provides, in pertinent part, as follows:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Thus, pursuant to Rule 4(m), if a plaintiff has not timely served a defendant and shows good cause for such failure, the Court must extend the time for service. If, however, no

good cause for such failure is shown, Rule 4(m) permits the Court to choose, in its discretion, either to dismiss the action without prejudice as to that defendant or to direct that service be effected within a specified time.

In this case, there is no evidence in the record that Plaintiff has served the Complaint and Summons on Defendants. Further, Plaintiff failed to respond to the Court's Order and, therefore, has not provided good cause for the failure to timely serve Defendants. As a result, pursuant to Rule 4(m), the Court is within its power to dismiss Plaintiff's action.

### **III. CONCLUSION**

Accordingly, for the reasons explained above, the Court **ORDERS** that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m). The Clerk is directed to close the file in this case.

**SO ORDERED** this 12th day of April, 2011.

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*/s/Harry S. Mattice, Jr.*  
HARRY S. MATTICE, JR.  
UNITED STATES DISTRICT JUDGE